

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 883 of 1989  
and  
First Appeal No.884 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI  
and  
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SPL LAND ACQUISITION OFFICER

Versus

CHIMANLAL BHAGWANDAS  
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Appearance:

MRS KETTY A MEHTA for Petitioner  
MR BB NAIK for Respondent No. 1  
Mrs. Hansa B. Punani, AGP, for the respondent No.4-State  
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CORAM : MR.JUSTICE M.H.KADRI  
and  
MR.JUSTICE D.P.BUCH

Date of decision: 01/08/2000

1. Appellant, Special Land Acquisition Officer, has filed these two appeals under Section 54 of the Land Acquisition Act, 1894 (to be referred to as the "Act" for short) read with Sec.96 of the Code of Civil Procedure, challenging common judgment and award dated January 17, 1989 passed by the learned 2nd Joint District Judge, Ahmedabad (Rural), at Mirzapur, in Land Reference Case Nos. 571 of 1987 and 572 of 1987, by which common judgment and award, learned 2nd Joint District Judge determined market value of acquired lands at the rate of Rs.37.00 per sq.mtr. as on January 27, 1983. As common questions of facts and law are involved in these First Appeals, we propose to dispose of them by this common judgment.

2. Executive Engineer, Gujarat Housing Board, Division No.II, Ahmedabad, vide his letter dated December 19, 1980, proposed to the State Government to acquire lands situated at Dholka, District: Ahmedabad, for public purpose of construction of residential houses of Gujarat Housing Board. The said proposal was scrutinized by the State Government and notification under Section 4(1) of the Act was published on January 27, 1983. After following the usual procedure, declaration under Section 6 of the Act was made which was published in the official gazette on November 22, 1984. The respondents, who were owners of acquired lands, were served with notices under Section 9(3)(4) of the Act. The respondents appeared before the Land Acquisition Officer and claimed compensation of acquired lands at the rate of Rs.150/per sq.yard. The Land Acquisition Officer, on the basis of materials placed before him, made his award on September 17, 1986 and offered compensation of acquired lands at the rate of Rs.7/- per sq.mtr. The respondents were of the opinion that compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court, Ahmedabad (Rural), for determination of adequate compensation. Accordingly, references were made to the District Court, Ahmedabad (Rural), which were numbered as Land Reference Cases Nos. 571 of 1987 and 572 of 1987.

3. Before the Reference Court the respondents claimed compensation at the rate of Rs.100/- per sq.mtr. In the applications, it was pleaded by the respondents that acquired lands were fertile and irrigated lands and they used to cultivate vegetables, paddy, bajri, etc.

and were earning Rs.4000/per bigha per year as net income.

4. The appellant and Land Acquisition Officer contested the applications by filing written statement inter alia contending that compensation offered by the Land Acquisition Officer was just and adequate and the claimants were not entitled to enhanced compensation and the applications be dismissed with costs.

5. On rival assertions of the parties, the Reference Court framed issues at Exh.8. To substantiate their claim, the respondents examined Hiralal Girdharbhai, who was owner and occupier of acquired land bearing Survey No.2030, at Exh.31. The said witness produced documentary evidence in support of claim of enhanced compensation. On behalf of the appellant, Sumatilal Vadilal Shah, Executive Engineer of the Gujarat Housing Board, was examined at Exh.36.

6. The Reference Court, after appreciating oral as well as documentary evidence, deduced that 7/12 extracts produced by the respondents indicated that, on acquired lands, crops of cotton, juwar, bajri, etc. were raised and the respondents might be earning around Rs.2000/- to Rs.2500/- per year per bigha which factor requires to be taken into consideration for determination of market value of acquired lands. The Reference Court further deduced that the documents produced by the respondents at Exh.30/1 and 30/3 were true copies of the registered documents, but, as the respondents had not examined vendor or vendee, the said documents cannot be said to have been proved in eye of law. However, the Reference Court deduced that under Section 51A of the Act, certified copies of the documents which were registered were admissible in evidence. The Reference Court further deduced that sale deed mark 30/1 which was in respect of lands situated in town Dholka within municipal limits, was non-agricultural land and, therefore, it cannot be compared with acquired lands which were situated outside limits of the Municipality. The Reference Court further deduced that, similarly, lands which were subject matter of document mark 30/3 were also non-agricultural lands which were situated within limits of municipality and, therefore, the land of sale deed Mark 30/3 was also not comparable for the purpose of determination of market value of present acquired lands. The Reference Court, after making observations with regard to situation of acquired lands, concluded that as there were construction activities going on nearby acquired lands and the fact that the lands were acquired for Gujarat Housing Board

for construction of houses, possibility cannot be ruled out that acquired lands had great potential value. The Reference Court, therefore, concluded that, considering situation, fertility and potential value of acquired lands, it would be just and proper to determine market value of acquired lands at the rate of Rs.37/- per sq.mtr., which has given rise to filing of these two appeals by the Special Land Acquisition Officer.

7. Heard learned counsel for the appellant and learned counsel for the respondents. We have also taken into consideration relevant documents as well as oral evidence produced in the Reference Court.

8. Learned counsel for the appellant has vehemently urged that determination of market value of acquired lands by the Reference Court is based on total lack of evidence. It is further submitted that the Reference Court had considered documents mark 30/1 and mark 30/3, which were copies of registered sale deeds, for which neither vendee nor vendor was examined, for the purpose of determination of market value of present acquired lands, and that piece of evidence cannot be called evidence in the eye of law. Learned counsel for the appellant further submitted that determination of market value of acquired lands by the Reference Court is arrived at in absence of any cogent and reliable evidence produced by the respondents and, hence, the judgment and award of the Reference Court should be quashed and set aside and the appeals be allowed.

9. Having gone through the record and proceedings and arguments advanced by learned counsel for the parties, we are of the opinion that determination of market value of acquired lands by the Reference Court is erroneous because it is arrived at in absence of any reliable evidence, and is based on total lack of evidence produced by the respondent-claimants.

10. As held by the Honourable Supreme Court, in the case of Special Deputy Collector vs. Kurra Sambasiva Rao, reported in AIR 1997 Supreme Court 2625, unless vendor and vendee of sale transaction are examined, it cannot be held that the said transaction was proved in the eye of law. Documents, which were produced at Mark 30/1 and 30/3, were certified copies of registered sale deeds which were admissible in evidence in view of Section 51A of the Act, but unless vendor or vendee was examined by the respondents, those documents cannot be said to have been proved by the respondents before the Reference Court. The relevant observations made by the Supreme Court in para-8 of the aforesaid decision are as

under :-

"The best evidence of the value of property are the sale transaction in respect of the acquired land to which the claimant himself is a party; the time at which the property comes to be sold; the purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out. They are all relevant factors. In the absence of such a sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands in the vicinity of the acquired lands (sic). In that case, the features required to be present are; it must be within a reasonable time of the date of the notification; it must be a bona fide transaction; it should be a sale of land similar to the land acquired or land adjacent to the land acquired; and it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired lands as on the date of the notification published under Section 4(1) of the Act. This would be established by examining either the vendor or the vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Section 51-A of the Act only dispenses with the production of the original sale deed and directs to receive certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the sale deed is precluded from using the same for other purposes vis-a-vis this land. The marking of the certified copy is per se is not admissible in evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined. This principle has been repeated in a catena of subsequent decisions of this Court."

The Reference Court, in total lack of evidence on record, had determined the market value of the acquired lands which is contrary to the pronouncement of the Supreme Court in the case of Kurra Sambasiva Rao (supra).

11. In our view, to do substantial justice, it would be in the fitness of things to remand the reference cases to the Reference Court for determination of market value of acquired lands by the Reference Court de novo, after giving opportunity to the respondents as well as the appellant to lead evidence in support of their cases. The respondents-claimants shall be entitled to lead evidence by examining vendor or vendee to prove the documents produced at Exh.30/1 and 30/3. The respondents-claimants as well as the appellant will be

entitled to lead any other evidence permissible under law in support of their cases before the Reference Court. The Reference Court shall dispose of reference applications as expeditiously as possible preferably within six months from the date of receipt of the writ of this judgment.

12. As a result of foregoing discussion, both the appeals are allowed. The common judgment and award dated January 17, 1989 passed by the learned Joint District Judge, Ahmedabad (Rural), at Mirzapur, in Land Reference Case Nos. 571 of 1987 and 572 of 1987, is hereby quashed and set aside. Reference Applications are remanded back to the Reference Court to be tried in accordance with law. Office is directed to send back R & P to the Reference Court forth with along with copy of this common judgment, forthwith. No order as to costs.

(M.H.Kadri, J.)

(D.P. Buch, J.)

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